



JON M. HUNTSMAN, JR.  
Governor

GARY R. HERBERT  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

December 6, 2007

CERTIFIED RETURN RECEIPT  
7005 2570 0000 4801 8014

Ben McInnes  
Decorative Landscaping  
15848 South 580 East  
American Fork, Utah 84003

Subject: Reassessment for Cessation Order MC2007-03-05, Decorative Landscaping, T & M Holdings, S0350023, Salt Lake County, Utah

Dear Mr. McInnes:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on September 5, 2007. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts, which were not reasonably available on the date of the issuance of the proposed assessment. Now that the Cessation Order has been terminated (termination notice enclosed) the assessment can be completed. Following is the reassessment of the penalty for the cessation order:

- MC-07-03-05 Violation 1 of 1      \$1650

The enclosed worksheet specifically outlines how the violation was assessed. You should note that good faith has now been considered and some points were awarded which reduces the penalty.

Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter.



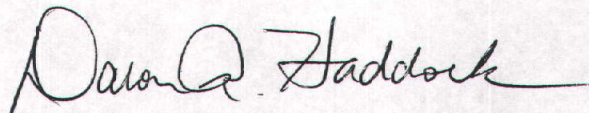
Ben McGinnis  
S/035/0033  
December 6, 2007  
Page 2 of 6

This conference will be conducted by the Division Director, Associate Director or assigned conference officer. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty. 2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

**If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment.** Please remit payment to the Division, mail c/o Vickie Southwick.

Thank you for your help in completing these important regulatory requirements. Please call me at (801) 538-5325 if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Daron R. Haddock". The signature is fluid and cursive, with the first name "Daron" and last name "Haddock" clearly legible.

Daron R. Haddock  
Assessment Officer

Enclosures: Worksheets, Termination Notice

cc: Vickie Southwick, Exec. Sec.

Vicki Bailey, Accounting

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**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

COMPANY / MINE Decorative Landscaping/T & M Holdings PERMIT S0350023

NOV / CO # MC-2007-03-05

VIOLATION 1 of 1

REASSESSMENT DATE December 6, 2007

ASSESSMENT OFFICER Daron R. Haddock

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall within three (3) years of today's date?

PREVIOUS VIOLATIONS	EFFECTIVE DATE	POINTS (1pt for NOV 5pts for CO)
<u>MC2005-03-02</u>	<u>3/17/2005</u>	<u>5</u>
<u>MC2006-03-03</u>	<u>5/04/2006</u>	<u>5</u>

**TOTAL HISTORY POINTS 10**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector's and operator's statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event  
(assign points according to A or B)

A. EVENT VIOLATION (Max 45 pts.)

1. What is the event which the violated standard was designed to prevent?

2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. An inspection of this site conducted by Paul Baker on July 6, 2007, found areas of mining related disturbance, which are not part of a current mining permit. Approximately 7.83 acres of disturbance has been created at this site while only 5 acres are allowed under the small mine NOI. The Operator had not amended the current plan to conduct mining activities in this expanded area. Disturbance has actually occurred. Twenty points are assigned.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**ASSIGN DAMAGE POINTS 8**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *The inspector stated that the operator has disturbed approximately 1.83 acres of land that had not been approved for disturbance. The damage is the loss of vegetation and soil resources from the area disturbed as the result of mining operations conducted without an approved permit. While the soil and vegetation have been disturbed, the site could still be reclaimed. There seemed to be more potential for damage rather than actual damage, so I am assessing points in the lower 1/3 of the range.*

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS \_\_\_\_\_**

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\*

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE NegligenceASSIGN NEGLIGENCE POINTS 8

## PROVIDE AN EXPLANATION OF POINTS:

\*\*\* The inspector indicated that the violation was the result of the Operator's indifference to the DOGM regulations. The Operator did not adequately control the workers on the site and allowed them to conduct activities that were not approved. Excavating rock from the site took place without first getting approval and this showed lack of reasonable care. A prudent operator would understand the need to receive approval of an amendment prior to creating additional disturbance. The Operator was negligent in this regard, thus the assignment of points in the mid-part of the negligence range.

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?

IF SO--EASY ABATEMENT

## Easy Abatement Situation

X	Immediate Compliance	-11 to -20*
	(Immediately following the issuance of the NOV)	
X	Rapid Compliance	-1 to -10
	(Permittee used diligence to abate the violation)	
X	Normal Compliance	0
	(Operator complied within the abatement period required)	
	(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)	

\*Assign in upper of lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- |   |   |             |
|---|---|-------------|
| X | Rapid Compliance  | -11 to -20* |
|   | (Permittee used diligence to abate the violation)   |             |
| X | Normal Compliance   | -1 to -10*  |
|   | (Operator complied within the abatement period required)  |             |
| X | Extended Compliance   | 0           |
|   | (Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete) |             |
|   | (Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)   |             |

EASY OR DIFFICULT ABATEMENT? Difficult

ASSIGN GOOD FAITH POINTS \_\_\_\_\_

**PROVIDE AN EXPLANATION OF POINTS:**

\*\*\* *Discussions with the Inspector, reveal that the Operator was fairly active in completing the required abatement. The Operator had until October 15, 2007 to complete the seeding for the site and the work was completed before the deadline. I considered this to be a difficult abatement, because it required the acquisition of seed and then a fair amount of equipment work to reclaim the site down to the permitted acreage. Work was completed a little ahead of schedule and more area was reclaimed than what was actually required. I view this situation as a little better than Normal Compliance of a difficult abatement category and 11 points are awarded.*

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

NOTICE OF VIOLATION # <u>MC-07-03-05</u>	
I.	TOTAL HISTORY POINTS <u>10</u>
II.	TOTAL SERIOUSNESS POINTS <u>28</u>
III.	TOTAL NEGLIGENCE POINTS <u>8</u>
IV.	TOTAL GOOD FAITH POINTS <u>-11</u>
	TOTAL ASSESSED POINTS <u>35</u>
TOTAL ASSESSED FINE <u>\$ 1,650</u>	



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## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil Gas and Mining

JOHN R. BAZA  
Division Director

Page 1 of 1

### TERMINATION of Cessation Order

To the following Permittee or Operator:

Name: Decorative Landscaping

Mailing Address: 3231 North Millcreek Road, Pleasant Grove, Utah 84062

Mine Name: T&M Holdings Permit Number: M0350023

Utah Mined Land Reclamation Act, Section 40-8-1 et. seq., *Utah Code Annotated (1953)*:

Notice of Violation No. \_\_\_\_\_ dated \_\_\_\_\_, 20 \_\_\_\_

Cessation Order No: MC2007-03-05 dated July 17,, 20 07

Part 1 of 1 is ☐ vacated ☒ terminated because: the required abatement was completed effective October 15,  
2007

Date of service/mailing: \_\_\_\_\_

Time of service/mailing ☐ a.m. ☐ p.m.

Tracy Burnham  
Permittee or Operator Representative

President  
Title

Signature

Paul B. Baker  
Division of Oil, Gas & Mining Representative

Reclamation Biologist  
Title

Signature

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